

REMARKS**DRAWING OBJECTIONS**

Applicant respectfully traverses the objections to the drawings for the following reasons.

The objection to the drawing under 1. is not understood because the new drawings submitted in the Reply to the Notice to File Corrected Application Papers dated January 20, 2004, have none of the defects noted under 1. of the Office Action. The objection thus appears to be based on the originally submitted drawings and not on the drawings subsequently submitted. However, to avoid any further questions, in case the Examiner has been unable to locate Applicant's response of January 20, 2004, a new sheet of drawing is attached hereto to be substituted for whatever is on file.

With respect to the objection under 2., Applicant respectfully submits that the drawings are in full compliance with all requirements of the rules of practice. The Brief Description of the Drawings clearly indicates that Figure 2 is a transverse cross-sectional view ***"through a preferred embodiment of a slat-like member..."*** In other words, the moisture-retaining depression (15) is a preferred embodiment of the broad invention shown in Figure 1. Figure 1 is commensurate with the invention set forth in claim 1, and Figure 2 shows a preferred embodiment that includes the moisture-retaining depression. Thus, Figures 1 and 2 are in clear conformity with the requirements of the

rules of practice as applied to the instant invention. Accordingly, withdrawal of this objection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 112

The rejection of claim 11 under 35 U.S.C. § 112, second paragraph, as being indefinite because there is allegedly insufficient antecedent basis for the limitation "said last-mentioned end." Applicant is at loss to understand this rejection because claim 10, from which claim 11 depends, refers to "one end." Reference in claim 11 to "said last-mentioned end" clearly refers to the "one end" of claim 10 and thus is in full compliance with the practices in the PTO. Accordingly, reconsideration of this rejection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

The rejection of claims 1-3 and 13, 14 under 35 U.S.C. § 103(a) as unpatentable over Glassman (US 3,766,667) is respectfully traversed for the following reasons.

The **Glassman** patent ('667) is directed to an educational toy useful as an aid in teaching arithmetic concepts. There is no suggestion of a barrier arrangement to be placed between a plant pot and the supporting surface that is the subject matter of the present invention. The '667 Patent is thus non-analogous art. This is readily apparent from a perusal of the patent that utilizes for purposes of manipulative arithmetic, a plurality of blocks (B1 through B10), each having a numerical value designation indicated along one side of each block. A

number of apertures (30), generally dimensionally equivalent, extend "from the top face 18 to the bottom face 22" (column 3, lines 40-50), whereby the number of apertures (30) is equivalent to the numerical value designation (n) assigned to the block. The specific value chosen for the length P of a given peg (12) relates to a "significant feature of the invention of the patent and is importantly dependent upon the dimensional value of the height (h) of blocks B (column 3, lines 51-62). Assembly of the blocks takes place by placing the bottom face (22) of the higher block on the top face (18) of the lower block. In contradistinction, the holes and pegs in the present invention are arranged on the sides as is quite apparent from the recitation that the "number of pegs on one side of a slat-like member corresponds to a similarly arranged number of holes on the other side." See also column 4, lines 1-11.

With respect to the significance of the length P of the pegs (12), attention is respectfully directed to column 5, lines 5-32 and column 6, lines 30-60, clearly demonstrating the significance of the importance of the length of the pegs.

Claim 1 specifies that each slat-like member is provided with

"assembling means for assembling the slat-like members in predetermined configuration including a number of pegs and holes, whereby the number of pegs on one side of a slat-like member corresponds to a similarly arranged number of holes on the other side of the slat-like member."

In **Glassman**, each block is provided with a predetermined number of holes (30) that extend clear through the same, and the presence of a peg

depends on the selective arrangement carried out by the child using the toy. Clearly, the '667 Patent does not show such an arrangement.

Furthermore, claim 1 specifies that

"a further number of similarly arranged holes is provided on said one side which are disposed substantially symmetrical with respect to the transverse center plane of the slat-like member to permit rotation of each last lateral slat-like member to conceal and protect the pegs thereof."

There is absolutely no disclosure or even suggestion for this limitation in

Glassman.

In the last Office Action, the Examiner attempted to brush aside this limitation by contending that

"member B-6 has 6 holes wherein three pegs could inserted into 3 of said holes, while the symmetrically opposite holes are left void."

Applicant respectfully submits that this attempted justification is clearly unwarranted in the light of the teachings of the '667 Patent and is, at best, a hindsight speculation of how the components of this patent might be used. Suffice it to point out that the proposed use of the components of the patent would run clearly counter to the teachings of the intended use of the toy. Nor is there even any suggestion for such use, not to mention that such use still would not meet the language of the claim.

With respect to claims 3-5, 7-8 and 10, the Examiner attempts to read the limitation of the moisture-retaining means of these claims on Figure 8, contending that the moisture-retaining means is "the

indentation created by the combination of hole 30 and peg 12."

Applicant is at loss to understand this contention.

With respect to claims 4, 8 and 10, as well as claims 5 and 7, the Examiner totally fails to indicate how the reference meets the limitations of these claims.

Finally, the Examiner also rejects the limitation that the device is made of plastic. Applicant does not contend to have invented parts from plastic. However, it is not only the ease of cleaning plastic parts, compared, for example, to wooden blocks, but also the possibility of cleaning the slat-like members of this invention, made from plastic, by placing them in a dishwasher. As is known to all those familiar with the subject of the invention, supports for potted plants are subject to considerable soiling that frequently is hard to remove. The possibility of realizing a complete cleaning action in a dishwasher greatly enhances the value of the invention. Thus, the limitation of the plastic material is not a matter within the general skill of a worker "to select a known material on the basis of its suitability for the intended use." This rationale is misapplied to the instant application and claims thereof because plastic is not a necessity for the type of toy contemplated in the '667 Patent. Again, the holding of "obvious design choice" is legally flawed.

What was said above also applies to the Examiner reasoning in 7. regarding claim 6. In fact, the Examiner's statement that merely changing the shape or form of an article without changing its function is

no invention is contrary to an objective analysis of the '667 Patent because the change in shape clearly brings about a change in function of the particular feature.

NEWLY ADDED CLAIMS

Claims 15-19 have been added herein so as to cover the present invention in somewhat different terms. These claims are clearly patentable for reasons pointed out with respect to the original claims.

The remaining patents cited in the last Office Action have been considered but are not believed to disclose or suggest the present invention. As they have not been cited against any of the claims, a detailed discussion thereof is believed unnecessary at this time.

ALLOWABLE SUBJECT MATTER

The Examiner has indicated that claims 9 and 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Appropriate action will be taken upon determination of the allowability of the claims from which these allowable claims depend in the light of the arguments presented herein.

In view of the foregoing amendments and remarks, reconsideration and favorable action on all the claims are respectfully solicited.

A serious effort has been made to advance the prosecution of this application. It is suggested that the Examiner contact the undersigned by telephone at the number indicated below if only minor matters remain preventing early allowance of the application.

Respectfully submitted,



PMC/mks

Attachment - Drawing (1)

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